

# SENATE BILL No. 404

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 16-34-2; IC 25-1-9-4; IC 25-22.5-8-6.

**Synopsis:** Abortion, child abuse, and sexual trafficking. Requires that certain information must be provided by the parent or legal guardian of an unemancipated pregnant woman when giving written consent for the unemancipated pregnant woman to have an abortion. Provides that a parent or legal guardian of a pregnant minor; (1) is an interested party with respect to a petition to waive the parental consent requirement; and (2) shall be served notice of any hearing on the petition. Provides that the court may not rule on the petition unless proof of service of the notice to a parent or legal guardian is filed with the court. Provides that the parent or legal guardian is entitled to an opportunity to submit evidence to the court. Provides that a court may waive the requirement of parental consent if the court finds by clear and convincing evidence that the minor is mature enough to make the abortion decision independently or that an abortion would be in the minor's best interests. (Current law does not specify a standard of proof.) Requires a physician who receives written consent for an unemancipated pregnant woman to have an abortion to execute an affidavit for inclusion in the unemancipated pregnant woman's medical record. Prohibits a person from aiding or assisting an unemancipated pregnant woman in obtaining an abortion without the consent of the minor's parent or guardian. Authorizes the award of civil damages for a violation. Authorizes certain persons to seek an injunction from acts that would aid or assist an unemancipated pregnant woman in obtaining an abortion without parental consent. Provides that a health care provider  
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**Effective:** July 1, 2017.

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January 10, 2017, read first time and referred to Committee on Judiciary.

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## Digest Continued

shall transmit the pregnancy termination form to the state department of health (state department) and separately to the department of child services if the woman having the abortion is less than 16 years of age (rather than if the woman is less than 14 years of age as provided by current law). Requires the state department to notify and provide a copy of the form to the department of child services when it has received a form notifying the state department that a female less than 16 years of age has had an abortion. Raises the penalty for the failure to file certain forms regarding performed abortions from a Class B misdemeanor to a Class A misdemeanor. Makes it a Class A misdemeanor for a physician to perform an abortion on a female who is less than 16 years of age and recklessly fail to transmit the pregnancy termination form to the state department. Provides that a health care practitioner is subject to disciplinary sanctions for failure to report suspected child abuse or sexual trafficking. Requires the medical licensing board to revoke a physician's license if the physician: (1) negligently fails to transmit a form regarding an abortion performed on a female who is less than 16 years of age; and (2) performs an abortion in violation of state law.



Introduced

First Regular Session 120th General Assembly (2017)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2016 Regular Session of the General Assembly.

## SENATE BILL No. 404

A BILL FOR AN ACT to amend the Indiana Code concerning health.

*Be it enacted by the General Assembly of the State of Indiana:*

1 SECTION 1. IC 16-34-2-4, AS AMENDED BY P.L.193-2011,  
2 SECTION 13, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
3 JULY 1, 2017]: Sec. 4. (a) No physician shall perform an abortion on  
4 an unemancipated pregnant woman less than eighteen (18) years of age  
5 without first having obtained:  
6 (1) the **notarized** written consent of **the unemancipated**  
7 **pregnant woman and** one (1) of the parents or the legal guardian  
8 of the ~~minor unemancipated~~ pregnant woman;  
9 (2) **government issued proof of identification of the parent or**  
10 **the legal guardian of the unemancipated pregnant woman;**  
11 **and**  
12 (3) **written documentation that establishes that the parent or**  
13 **legal guardian is the lawful parent or legal guardian of the**  
14 **unemancipated pregnant woman.**  
15 **The physician shall keep records of the documents required under**



1 **this subsection in the unemancipated pregnant woman's medical**  
2 **file for at least seven (7) years.**

3 (b) A minor:

4 (1) who objects to having to obtain the written consent of her  
5 parent or legal guardian under this section; or

6 (2) whose parent or legal guardian refuses to consent to an  
7 abortion;

8 may petition, on her own behalf or by next friend, the juvenile court in  
9 the county in which the pregnant woman resides or in which the  
10 abortion is to be performed, for a waiver of the parental consent  
11 requirement under subsection (a). A next friend may not be a physician  
12 or provider of abortion services, representative of the physician or  
13 provider, or other person that may receive a direct financial benefit  
14 from the performance of an abortion.

15 (c) A physician who feels that compliance with the parental consent  
16 requirement in subsection (a) would have an adverse effect on the  
17 welfare of the pregnant minor or on her pregnancy may petition the  
18 juvenile court within twenty-four (24) hours of the abortion request for  
19 a waiver of the parental consent requirement under subsection (a).

20 (d) The juvenile court must rule on a petition filed by a pregnant  
21 minor under subsection (b) or by her physician under subsection (c)  
22 within forty-eight (48) hours of the filing of the petition. **A parent or**  
23 **legal guardian of the pregnant minor is an interested party with**  
24 **respect to the petition and shall be served with notice in conformity**  
25 **with Indiana Trial Rules 4.1(a)(2) and 4.12 of any hearing on the**  
26 **petition. The court may not rule on the petition unless proof of**  
27 **service of the notice to a parent or legal guardian is filed with the**  
28 **court. The parent or legal guardian is entitled to an opportunity to**  
29 **submit evidence to the court.** Before ruling on the petition, the court  
30 shall consider **evidence submitted by the parent or legal guardian**  
31 **of the pregnant minor and** the concerns expressed by the pregnant  
32 minor and her physician. The requirement of parental consent under  
33 this section shall be waived by the juvenile court if the court finds by  
34 **clear and convincing evidence** that the minor is mature enough to  
35 make the abortion decision independently or that an abortion would be  
36 in the minor's best interests.

37 (e) Unless the juvenile court finds that the pregnant minor is already  
38 represented by an attorney, the juvenile court shall appoint an attorney  
39 to represent the pregnant minor in a waiver proceeding brought by the  
40 minor under subsection (b) and on any appeals. The cost of legal  
41 representation appointed for the minor under this section shall be paid  
42 by the county.



1 (f) A minor, ~~or her~~ **the minor's physician, or the minor's parent**  
 2 **or legal guardian** who desires to appeal an adverse judgment of the  
 3 juvenile court in a waiver proceeding under subsection (b) or (c) is  
 4 entitled to an expedited appeal, under rules to be adopted by the  
 5 supreme court.

6 (g) All records of the juvenile court and of the supreme court or the  
 7 court of appeals that are made as a result of proceedings conducted  
 8 under this section are confidential.

9 (h) A minor who initiates legal proceedings under this section is  
 10 exempt from the payment of filing fees.

11 (i) This section shall not apply where there is an emergency need for  
 12 a medical procedure to be performed such that continuation of the  
 13 pregnancy provides an immediate threat and grave risk to the life or  
 14 health of the pregnant woman and the attending physician so certifies  
 15 in writing.

16 (j) **A physician receiving parental consent under subsection (a)**  
 17 **shall execute an affidavit for inclusion in the unemancipated**  
 18 **pregnant woman's medical record. The affidavit must contain the**  
 19 **following information:**

20 (1) **The physician's name.**

21 (2) **Certification that, to the physician's best information and**  
 22 **belief, a reasonable person under similar circumstances would**  
 23 **rely on the information provided by the unemancipated**  
 24 **pregnant woman and the unemancipated pregnant woman's**  
 25 **parent or legal guardian as sufficient evidence of identity and**  
 26 **relationship.**

27 (3) **The physician's signature.**

28 SECTION 2. IC 16-34-2-4.2 IS ADDED TO THE INDIANA CODE  
 29 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
 30 1, 2017]: **Sec. 4.2. (a) This section does not apply if consent is not**  
 31 **required under section 4 of this chapter.**

32 (b) **A person may not knowingly or intentionally aid or assist an**  
 33 **unemancipated pregnant woman in obtaining an abortion without**  
 34 **the consent required by section 4 of this chapter.**

35 (c) **A person who violates subsection (b) is civilly liable to the**  
 36 **unemancipated pregnant woman and the parent or legal guardian**  
 37 **of the unemancipated pregnant woman. A court may award**  
 38 **damages to a person adversely affected by a violation of this**  
 39 **section, including the following damages:**

40 (1) **Compensation for physical or emotional injury, without**  
 41 **the need of being physically present at the act or event.**

42 (2) **Attorney's fees.**



1           **(3) Court costs.**

2           **(4) Punitive damages.**

3           **However, an adult who engaged in or consented to another person**  
 4           **engaging in a sex act with a minor in violation of IC 35-42-4-3(a)**  
 5           **or IC 35-42-4-9 that resulted in the pregnancy may not be awarded**  
 6           **damages under this subsection.**

7           **(d) An unemancipated pregnant woman does not have the**  
 8           **capacity to consent to any action in violation of this section or**  
 9           **section 4 of this chapter. A person may not use as a defense to a**  
 10           **violation of subsection (b) that the abortion was performed or**  
 11           **induced with consent of the unemancipated pregnant woman and**  
 12           **otherwise met the requirements of this chapter.**

13           **(e) The attorney general, a prosecuting attorney, the parent or**  
 14           **guardian of the unemancipated pregnant woman, or any person**  
 15           **who may be adversely affected by the conduct may petition a court**  
 16           **to enjoin conduct that would violate this section if the person can**  
 17           **show that the conduct:**

18           **(1) is reasonably anticipated to occur in the future; or**

19           **(2) has occurred in the past, whether with the same**  
 20           **unemancipated pregnant woman or others, and that it is not**  
 21           **unreasonable to expect that the conduct may be repeated.**

22           **A court may enjoin conduct that would violate this section.**

23           SECTION 3. IC 16-34-2-5, AS AMENDED BY P.L.213-2016,  
 24           SECTION 16, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 25           JULY 1, 2017]: Sec. 5. (a) Every health care provider who performs a  
 26           surgical abortion or provides, prescribes, administers, or dispenses an  
 27           abortion inducing drug for the purposes of inducing an abortion shall  
 28           report the performance of the abortion or the provision, prescribing,  
 29           administration, or dispensing of an abortion inducing drug on a form  
 30           drafted by the state department, the purpose and function of which shall  
 31           be the improvement of maternal health and life through the compilation  
 32           of relevant maternal life and health factors and data, and a further  
 33           purpose and function shall be to monitor all abortions performed in  
 34           Indiana to assure the abortions are done only under the authorized  
 35           provisions of the law. For each abortion performed and abortion  
 36           inducing drug provided, prescribed, administered, or dispensed, the  
 37           report shall include, among other things, the following:

38           (1) The age of the patient.

39           (2) The date and location the abortion was performed or the  
 40           abortion inducing drug was provided, prescribed, administered,  
 41           or dispensed.

42           (3) The health care provider's full name and address, including the



- 1 name of the physicians performing the abortion or providing,  
 2 prescribing, administering, or dispensing the abortion inducing  
 3 drug.
- 4 (4) The name of the father if known.
- 5 (5) The age of the father, or the approximate age of the father if  
 6 the father's age is unknown.
- 7 (6) The following information concerning the abortion or the  
 8 provision, prescribing, administration, or dispensing of the  
 9 abortion inducing drug:
- 10 (A) The postfertilization age of the fetus.
- 11 (B) The manner in which the postfertilization age was  
 12 determined.
- 13 (C) The gender of the fetus, if detectable.
- 14 (D) Whether the fetus has been diagnosed with or has a  
 15 potential diagnosis of having Down syndrome or any other  
 16 disability.
- 17 (E) If after the earlier of the time the fetus obtains viability or  
 18 the time the postfertilization age of the fetus is at least twenty  
 19 (20) weeks, the medical reason for the performance of the  
 20 abortion or the provision, prescribing, administration, or  
 21 dispensing of the abortion inducing drug.
- 22 (7) For a surgical abortion, the medical procedure used for the  
 23 abortion and, if the fetus was viable or had a postfertilization age  
 24 of at least twenty (20) weeks:
- 25 (A) whether the procedure, in the reasonable judgment of the  
 26 health care provider, gave the fetus the best opportunity to  
 27 survive; and
- 28 (B) the basis for the determination that the pregnant woman  
 29 had a condition described in this chapter that required the  
 30 abortion to avert the death of or serious impairment to the  
 31 pregnant woman.
- 32 (8) For a nonsurgical abortion, the precise drugs provided,  
 33 prescribed, administered, or dispensed, and the means of delivery  
 34 of the drugs to the patient.
- 35 (9) For an early pre-viability termination, the medical indication  
 36 by diagnosis code for the fetus and the mother.
- 37 (10) The mother's obstetrical history, including dates of other  
 38 abortions, if any.
- 39 (11) The results of pathological examinations if performed.
- 40 (12) For a surgical abortion, whether the fetus was delivered  
 41 alive, and if so, how long the fetus lived.
- 42 (13) Records of all maternal deaths occurring at the location



1 where the abortion was performed or the abortion inducing drug  
2 was provided, prescribed, administered, or dispensed.

3 (14) The date the form was transmitted to the state department  
4 and, if applicable, separately to the department of child services.

5 (b) The health care provider shall complete the form provided for in  
6 subsection (a) and shall transmit the completed form to the state  
7 department, in the manner specified on the form, not later than July 30  
8 for each abortion occurring in the first six (6) months of that year and  
9 not later than January 30 for each abortion occurring in the last six (6)  
10 months of the preceding year. However, if an abortion is for a female  
11 who is less than ~~fourteen (14)~~ **sixteen (16)** years of age, the health care  
12 provider shall transmit the form to the state department of health and  
13 separately to the department of child services within three (3) days after  
14 the abortion is performed.

15 (c) The dates supplied on the form may not be redacted for any  
16 reason before the form is transmitted as provided in this section.

17 **(d) Upon receipt of a form regarding an abortion for a female**  
18 **who is less than sixteen (16) years of age as described in subsections**  
19 **(a) and (b), the state department shall:**

- 20 **(1) notify the department of child services that it received the**  
21 **form; and**  
22 **(2) provide a copy of the form to the department of child**  
23 **services.**

24 **The department of child services shall acknowledge to the state**  
25 **department that it has received a copy of the form.**

26 ~~(d)~~ **(e) A person who recklessly fails** to complete or  
27 timely transmit a form, as required under this section, for each abortion  
28 performed or abortion inducing drug that was provided, prescribed,  
29 administered, or dispensed, **is commits a Class B Class A**  
30 **misdemeanor.**

31 ~~(e)~~ **(f) Not later than June 30 of each year, the state department shall**  
32 **compile a public report providing the following:**

- 33 (1) Statistics for the previous calendar year from the information  
34 submitted under this section.  
35 (2) Statistics for previous calendar years compiled by the state  
36 department under this subsection, with updated information for  
37 the calendar year that was submitted to the state department after  
38 the compilation of the statistics.

39 The state department shall ensure that no identifying information of a  
40 pregnant woman is contained in the report.

41 SECTION 4. IC 16-34-2-7, AS AMENDED BY P.L.158-2013,  
42 SECTION 235, IS AMENDED TO READ AS FOLLOWS



1 [EFFECTIVE JULY 1, 2017]: Sec. 7. (a) Except as provided in  
 2 subsections (b) and (c), a person who knowingly or intentionally  
 3 performs an abortion not expressly provided for in this chapter commits  
 4 a Level 5 felony.

5 (b) A physician who:

6 (1) performs an abortion intentionally or knowingly in violation  
 7 of section 1(a)(1)(C) or 4 of this chapter; or

8 **(2) performs an abortion on a female who is less than sixteen**  
 9 **(16) years of age and recklessly fails to transmit the form to**  
 10 **the state department of health as described in section 5(b) of**  
 11 **this chapter;**

12 commits a Class A misdemeanor.

13 (c) A person who knowingly or intentionally performs an abortion  
 14 in violation of section 1.1 of this chapter commits a Class A infraction.

15 (d) A woman upon whom a partial birth abortion is performed may  
 16 not be prosecuted for violating or conspiring to violate section 1(b) of  
 17 this chapter.

18 SECTION 5. IC 25-1-9-4, AS AMENDED BY P.L.197-2007,  
 19 SECTION 22, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 20 JULY 1, 2017]: Sec. 4. (a) A practitioner shall conduct the  
 21 practitioner's practice in accordance with the standards established by  
 22 the board regulating the profession in question and is subject to the  
 23 exercise of the disciplinary sanctions under section 9 of this chapter if,  
 24 after a hearing, the board finds:

25 (1) a practitioner has:

26 (A) engaged in or knowingly cooperated in fraud or material  
 27 deception in order to obtain a license to practice, including  
 28 cheating on a licensing examination;

29 (B) engaged in fraud or material deception in the course of  
 30 professional services or activities;

31 (C) advertised services in a false or misleading manner; or

32 (D) been convicted of a crime or assessed a civil penalty  
 33 involving fraudulent billing practices, including fraud under:

34 (i) Medicaid (42 U.S.C. 1396 et seq.);

35 (ii) Medicare (42 U.S.C. 1395 et seq.);

36 (iii) the children's health insurance program under  
 37 IC 12-17.6; or

38 (iv) insurance claims;

39 (2) a practitioner has been convicted of a crime that:

40 (A) has a direct bearing on the practitioner's ability to continue  
 41 to practice competently; or

42 (B) is harmful to the public;



- 1 (3) a practitioner has knowingly violated any state statute or rule,  
 2 or federal statute or regulation, regulating the profession in  
 3 question;  
 4 (4) a practitioner has continued to practice although the  
 5 practitioner has become unfit to practice due to:  
 6 (A) professional incompetence that:  
 7 (i) may include the undertaking of professional activities  
 8 that the practitioner is not qualified by training or experience  
 9 to undertake; and  
 10 (ii) does not include activities performed under  
 11 IC 16-21-2-9;  
 12 (B) failure to keep abreast of current professional theory or  
 13 practice;  
 14 (C) physical or mental disability; or  
 15 (D) addiction to, abuse of, or severe dependency upon alcohol  
 16 or other drugs that endanger the public by impairing a  
 17 practitioner's ability to practice safely;  
 18 (5) a practitioner has engaged in a course of lewd or immoral  
 19 conduct in connection with the delivery of services to the public;  
 20 (6) a practitioner has allowed the practitioner's name or a license  
 21 issued under this chapter to be used in connection with an  
 22 individual who renders services beyond the scope of that  
 23 individual's training, experience, or competence;  
 24 (7) a practitioner has had disciplinary action taken against the  
 25 practitioner or the practitioner's license to practice in any state or  
 26 jurisdiction on grounds similar to those under this chapter;  
 27 (8) a practitioner has diverted:  
 28 (A) a legend drug (as defined in IC 16-18-2-199); or  
 29 (B) any other drug or device issued under a drug order (as  
 30 defined in IC 16-42-19-3) for another person;  
 31 (9) a practitioner, except as otherwise provided by law, has  
 32 knowingly prescribed, sold, or administered any drug classified  
 33 as a narcotic, addicting, or dangerous drug to a habitue or addict;  
 34 (10) a practitioner has failed to comply with an order imposing a  
 35 sanction under section 9 of this chapter;  
 36 (11) a practitioner has engaged in sexual contact with a patient  
 37 under the practitioner's care or has used the practitioner-patient  
 38 relationship to solicit sexual contact with a patient under the  
 39 practitioner's care;  
 40 (12) a practitioner who is a participating provider of a health  
 41 maintenance organization has knowingly collected or attempted  
 42 to collect from a subscriber or enrollee of the health maintenance



- 1 organization any sums that are owed by the health maintenance  
 2 organization; ~~or~~  
 3 (13) a practitioner has assisted another person in committing an  
 4 act that would be grounds for disciplinary sanctions under this  
 5 chapter; **or**  
 6 **(14) a practitioner has failed to report suspected child abuse**  
 7 **or sexual trafficking to law enforcement.**  
 8 (b) A practitioner who provides health care services to the  
 9 practitioner's spouse is not subject to disciplinary action under  
 10 subsection (a)(11).  
 11 (c) A certified copy of the record of disciplinary action is conclusive  
 12 evidence of the other jurisdiction's disciplinary action under subsection  
 13 (a)(7).  
 14 SECTION 6. IC 25-22.5-8-6 IS ADDED TO THE INDIANA CODE  
 15 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
 16 1, 2017]: **Sec. 6. (a) As used in this section, "abortion" has the**  
 17 **meaning set forth in IC 16-18-2-1.**  
 18 **(b) Notwithstanding IC 25-1-9, the board shall revoke the**  
 19 **license of a physician if, after appropriate notice and an**  
 20 **opportunity for a hearing, the attorney general proves by a**  
 21 **preponderance of the evidence that the physician:**  
 22 **(1) negligently failed to transmit the form to the state**  
 23 **department of health as described in IC 16-34-2-5(b); or**  
 24 **(2) performed an abortion in violation of IC 16-34-2-7(a)**  
 25 **through IC 16-34-2-7(c).**

